

BARKET EPSTEIN
BARKET EPSTEIN KEARON ALDEA & LoTURCO, LLP

666 OLD COUNTRY ROAD, SUITE 700
GARDEN CITY, NEW YORK 11530
516.745.1500 • [F] 516.745.1245
WWW.BARKETEPSTEIN.COM

ADDITIONAL OFFICES:
EMPIRE STATE BUILDING, NY, NEW YORK
HUNTINGTON, NEW YORK
ALL MAIL TO GARDEN CITY ADDRESS

February 10, 2023

VIA ECF

Hon. Jesse M. Furman
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States of America v. Shatir Tawfiq
No. 21 Cr. 0523 (JMF)

Dear Judge Furman:

I write on behalf of Shatir Tawfiq, defendant in the above-captioned criminal case. On October 12, 2022, Mr. Tawfiq pleaded guilty before Your Honor to Conspiracy to Transport Stolen Vehicles in violation of 18 U.S.C. § 371, and Interstate Transportation of Stolen Vehicles in violation of 18 U.S.C. § 2312. He is currently scheduled to be sentenced on March 1, 2023 (ECF #129). For the following reasons, we respectfully request that the sentencing be continued until after the birth of Mr. Tawfiq's son, which is expected to occur on or about June 3, 2023. This is our second request for an adjournment.

We make this request for three principal reasons. *First*, Mr. Tawfiq's wife, Fuseina Gimballa, is having a difficult pregnancy and Mr. Tawfiq's presence and assistance have played an essential role in her care thus far. As explained in the attached letter from Ms. Gimballa's treating physician, it would be "medically beneficial" for Ms. Gimballa if Mr. Tawfiq were available to care for her for the duration of the pregnancy. Because the doctor's letter contains sensitive medical and other personal protected information, we request permission for the letter to be filed under seal.

Second, and relatedly, Mr. Tawfiq's preoccupation with his wife's condition has interfered with our ability to prepare for sentencing. This is not to say that Mr. Tawfiq is in any way failing to treat this case with the seriousness it deserves. However, the complications associated with the pregnancy, combined with his busy work and childcare schedule as previously described in ECF #123, have necessarily delayed the process of preparing for sentencing.

Third, we believe a continuance of sentencing is required in any event to address the many factual disputes we have with the government's description of the offense conduct in its *Pimintel* letter, described in the presentence report ("PSR") at ¶6, as well as the PSR's description of the same conduct (PSR ¶¶54-78). To summarize, the government and Probation conclude that Mr.

Hon. Jesse M. Furman
February 10, 2023
Page 2 of 2

Tawfiq should be held responsible for losses of greater than \$1 million associated with the transportation of 24 stolen vehicles (PSR ¶78). Because the loss properly attributable to Mr. Tawfiq's offense conduct is far lower, the advisory Guidelines range set forth in both the *Pimintel* letter and the PSR is far too high. We believe that, under the circumstances, an evidentiary hearing will be required to determine the proper scope of Mr. Tawfiq's offense conduct and related conduct, if any, for which he ought to be held accountable. *See United States v. Fatico*, 603 F.2d 1053 (2d Cir. 1979).

I have conferred with AUSAs Kevin Mead and Jane Chong, who advise that the Government does not object to an adjournment as long as Mr. Tawfiq is required to submit any objections to the PSR—which was first disclosed on December 1, 2022, made final on December 29, 2022, and to which the defendant has never objected—at least 60 days before the date of sentencing.

Based on the government's position, we respectfully request a sentencing date of **June 28, 2023**, or later.

Thank you for your time and consideration.

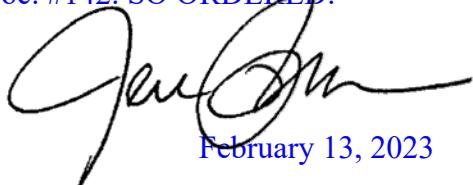
Sincerely,

/s

Matthew Keller
Kevin Kearon

cc: AUSA Jane Chong (by ECF)
AUSA Kevin Bowmar Mead (by ECF)

Application GRANTED. Sentencing is hereby ADJOURNED to June 28, 2023, at 3:00 p.m. If a Fatico hearing is necessary, it will be held the same day beginning at 9:30 a.m. The parties shall inform the Court by May 19, 2023, whether or not a hearing is necessary and, if so, how long they expect it to take. The Court will file Exhibit A under seal. The Clerk of Court is directed to terminate Doc. #142. SO ORDERED.



February 13, 2023